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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120919470-3513-02]

RIN 0648-BC58

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Shrimp Fishery Off the Southern Atlantic States; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of final action; revision to Fishery
Management Plan.

SUMMARY: NMFS issues this final rule to implement Amendment 9
(Amendment 9) to the Fishery Management Plan for the Shrimp
Fishery of the South Atlantic Region (FMP), as prepared and
submitted by the South Atlantic Fishery Management Council
(Council). This final rule revises the criteria and procedures
by which a South Atlantic state may request a concurrent closure
of the exclusive economic zone (EEZ) to the commercial harvest
of penaeid shrimp (brown, pink, and white shrimp) when state
waters close as a result of severe winter weather. Amendment 9
also revises the overfished and overfishing status determination
criteria for pink shrimp. The purpose of this rule is to

increase the flexibility and timeliness of the criteria and process for implementing a concurrent closure of penaeid shrimp harvest in the EEZ to maximize protection of overwintering white shrimp in the South Atlantic.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of Amendment 9, which includes an environmental assessment, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727-824-5305, or e-mail: kate.michie@noaa.gov.

SUPPLEMENTARY INFORMATION: The penaeid shrimp fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On March 4, 2013, NMFS published a notice of availability for Amendment 9 and requested public comment (78 FR 14069). On March 20, 2013, NMFS published a proposed rule for Amendment 9 and requested public comment (78 FR 17178). The proposed rule and Amendment 9 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in this Final Rule

The management measures contained in Amendment 9 and this final rule do not require any changes to the current regulatory text within § 622.206(a), "South Atlantic shrimp cold weather closure." This is because the current regulations refer to the FMP for the specific criteria and procedures required to implement a concurrent closure of the EEZ for penaeid shrimp. This final rule revises those criteria and procedures within the FMP; however, the regulatory text does not change.

Criteria Used to Trigger a State's Ability to Request a Concurrent Closure of the EEZ to Penaeid Shrimp Commercial Harvest

This final rule revises the criteria that a state must meet to request from NMFS a closure of commercial penaeid shrimp harvest in Federal waters following severe winter weather and a closure of state waters. Currently, a state must demonstrate at least an 80-percent reduction in the population of overwintering white shrimp in order to justify a closure. This rule requires that a state must demonstrate either at least an 80-percent reduction in the population of overwintering white shrimp, or that state water temperatures were 9 °C (48 °F) or less, for at least 7 consecutive days. These revised criteria provide increased flexibility for a state to protect the overwintering

white shrimp in adjacent EEZ waters.

Process for a State to Request a Concurrent Closure of the EEZ
to Penaeid Shrimp Commercial Harvest

This final rule revises the procedures for a state to request a closure of the penaeid shrimp commercial sector in the EEZ concurrent with a closure of its state waters. The revised procedures allow a state, after determining that the revised concurrent closure criteria have been met, to submit a letter directly to the NMFS Regional Administrator (RA) with the request and supporting data for a concurrent closure of penaeid shrimp harvest in the EEZ adjacent to the closed state waters. After a review of the request and supporting information, if the RA determines the recommended closure is in accordance with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, NMFS would implement the closure through a notification in the Federal Register. These revised procedures reduce the administrative burden to the states and the Council through their more efficient process.

Additional Management Measure Contained in Amendment 9

Amendment 9 also revises the overfished and overfishing status determination criteria (biomass at the maximum sustainable yield (B_{MSY})) for the pink shrimp stock. The B_{MSY} proxy is revised based on more recent Southeast Area Monitoring

and Assessment Program (SEAMAP) harvest data for pink shrimp. Specifically, Amendment 9 revises the B_{MSY} proxy for pink shrimp using the lowest catch per unit effort (CPUE) value from SEAMAP during the period 1990-2011 (0.089 individuals per hectare). The Council and NMFS determined that the pink shrimp stock size that produced the relatively low CPUE value of 0.089 individuals per hectare does not compromise the long-term capacity of the pink shrimp stock to achieve MSY, because the low stock size has historically produced a biomass the following year that is capable of achieving MSY, based on the best available science.

Comments and Responses

NMFS received two comment submissions on Amendment 9 and the proposed rule. One letter was from an individual that expressed support for Amendment 9 and the proposed rule and the other submission was from a Federal agency stating that they had no comments on Amendment 9 or the proposed rule. No other comments were received. NMFS agrees with the individual commenter that this amendment will help protect overwintering white shrimp.

Changes from the Proposed Rule

On April 17, 2013, NMFS published in the Federal Register an interim final rule to reorganize the regulations in 50 CFR part 622 for the Gulf of Mexico, South Atlantic, and the

Caribbean (78 FR 22950). That interim final rule did not create any new rights or obligations; it reorganized the existing regulatory requirements in the Code of Federal Regulations into a new format. This final rule incorporates this new format but does not change the specific regulatory measures that were discussed in the proposed rule. As a result of this reorganization, the shrimp cold weather closure regulatory text previously located at § 622.35(d) is now located at § 622.206(a).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary to more efficiently manage the penaeid shrimp resource, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. No duplicative, overlapping, or conflicting Federal rules have been identified. This final rule would not establish any new reporting or record-keeping requirements.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on

a substantial number of small entities. The factual basis for the certification was published in the proposed rule is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Authority: 16 U.S.C. 1801 et seq.

Dated: June 4, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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